

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES PERNELL,

Plaintiff,

-against-

MEMORANDUM AND ORDER
11-CV-4562(JS)(WDW)

VINCENT DEMARCO, Sheriff of
Suffolk County, Individually and
in his Official Capacity,

Defendant.

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APPEARANCES:

For Plaintiffs: James Pernel, Pro Se
400380
Suffolk County Correctional Facility
110 Centre Drive
Riverhead, NY 11901

For Defendants: No appearances

SEYBERT, District Judge:

Presently pending before the Court is the pro se Complaint brought by incarcerated pro se plaintiff James Pernel ("Plaintiff") pursuant to 42 U.S.C. § 1983 ("Section 1983"), accompanied by an application to proceed in forma pauperis. Upon review of the declaration in support of the application to proceed in forma pauperis, the Court determines that the Plaintiff's financial status qualifies him to commence this action without prepayment of the \$350.00 filing fee. See 28 U.S.C. §§ 1914(a); 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED.

Having reviewed the pro se Complaint, the undersigned declines to conclude at this stage that the within action is

frivolous or malicious within the meaning of 28 U.S.C. § 1915. While it may be that Plaintiff is unable to prevail on his claim, the Court's uncertainty does not justify dismissal at this early juncture. McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). Accordingly, the application to proceed in forma pauperis is GRANTED and the Court orders service of the Complaint without prepayment of the filing fee.

The Clerk of the Court is directed to forward to the United States Marshal for the Eastern District of New York copies of Plaintiff's Summons, Complaint, and this Order for service upon the Defendants without prepayment of fees. Furthermore, the Clerk is directed to mail a copy of this Order to the Plaintiff. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

SO ORDERED.

/s/ JOANNA SEYBERT
JOANNA SEYBERT, U.S.D.J.

Dated: October 11, 2011
Central Islip, New York